

AMENDED IN ASSEMBLY JUNE 12, 2014  
AMENDED IN SENATE JANUARY 17, 2014  
AMENDED IN SENATE JANUARY 6, 2014

**SENATE BILL**

**No. 812**

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**Introduced by Senator De León**

February 22, 2013

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An act to amend ~~Section 25200 of, and to add Section 25200.20 to, Sections 25178, 25200, and 25200.1 of, to add Sections 25196.7, 25200.20, 25200.21, and 25200.22 to, and to add Article 8.8 (commencing with Section 25199.20) to Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 812, as amended, De León. ~~Hazardous waste: facilities permitting waste.~~

**Existing**

(1) *Existing* law requires the facilities handling hazardous waste to obtain a permit from the Department of Toxic Substances Control. Existing law requires an owner or operator of the facility intending to renew the facility's permit to submit a complete Part A application for a permit renewal prior to the expiration of the permit. Existing law requires the owner or operator to submit a complete Part B application when requested by the department. *Existing law requires the department to issue a permit if the facility meets specified requirements.*

This bill would instead require the owner or operator of a facility to submit complete Part A and Part B applications for a permit renewal at least 2 years prior to the expiration date of the permit. The bill would require the department to approve or deny the application for permit

renewal within 36 months of the expiration of the facility's permit. The bill would deem an application for permit renewal be denied if the department fails to approve or deny the application within that time period. *The bill would require the department, on or before January 1, 2016, to adopt regulations requiring financial bonds or other security for a hazardous waste facility, and establishing additional specified criteria to be used by the department in its permitting decisions.*

**Existing**

(2) *Existing law* authorizes a hazardous waste facility in existence on a specified date or on the effective date of any statute or regulation that subjects the facility to the hazardous waste permitting requirements to continue to operate under a grant of interim status pending the review and decision of the department on the permit application.

This bill would provide that interim status granted on or after January 1, 2015, terminates 5 years from the date the interim status is granted or on the date the department took final action on the application for a permit, whichever is earlier.

(3) *Existing law requires the department, on or before January 1 of each odd-numbered year, to post on its Internet Web site specified information.*

*This bill would add certain information that would need to be posted and would require that the information be translated into Spanish.*

(4) *Existing law* authorizes the department to take enforcement actions for alleged violations of any law or regulations regulating hazardous waste.

*This bill would require the department, as part of any enforcement action alleging a release of hazardous waste in violation of law, to contract with an independent 3rd party to conduct required testing to verify that the release of the hazardous waste has been abated and the site remediated.*

(5) *This bill would establish the Bureau of Internal Affairs within the department to investigate any complaint alleging departmental misconduct. The bill would further require the bureau to review policies, practices, and procedures of the department upon the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly. The bill would establish the DTSC Citizen Oversight Committee within the department and require the committee to perform various duties, including, among other things, receiving complaints alleging departmental misconduct and referring allegations of departmental misconduct to the bureau, to the Criminal Investigation*

*Division of the California Environmental Protection Agency, or to another entity, as appropriate.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) The mission of the Department of Toxic Substances Control,  
4 as noted in its mission statement, is “to protect California’s people  
5 and environment from harmful effects of toxic substances through  
6 the restoration of contaminated resources, enforcement, regulation  
7 and pollution prevention.”

8 (2) In an effort to protect the public health and minimize  
9 environmental impacts, the state requires that each hazardous waste  
10 management facility that treats, stores, handles, or disposes of  
11 hazardous waste obtain a permit or other authorization from the  
12 department.

13 (3) Currently, the department regulates 117 facilities across the  
14 state that store, treat, or dispose of hazardous waste. Of these  
15 facilities, nearly a quarter are operating on permits whose original  
16 expiration dates have passed.

17 (4) One facility operated by Exide Technologies in Vernon,  
18 California has been allowed to operate on an interim permit for  
19 over 30 years, regardless of its repeated violations of environmental  
20 and public health standards.

21 (5) Unfortunately, many communities continue to suffer with  
22 toxic emissions and releases with limited protection from our  
23 current hazardous waste management regulatory system.

24 (6) The longstanding problems at the Exide Technologies facility  
25 are only the most recent examples of the system’s failures.

26 (b) It is the intent of the Legislature to strengthen our hazardous  
27 waste management regulatory system to better protect vulnerable  
28 communities and residents from toxic pollution by addressing  
29 loopholes in the permitting system.

30 SEC. 2. Section 25178 of the Health and Safety Code is  
31 amended to read:

25178. On or before January 1 of each odd-numbered year, the department shall post on its *Internet Web-site*, *site and translate into Spanish*, at a minimum, all of the following:

(a) The status of the regulatory and program developments required pursuant to legislative mandates.

(b) ~~(1)~~ The status of the hazardous waste facilities permit program that shall include all of the following information:

~~(A) A description~~

~~(1) Complete copies of the final hazardous waste facilities permit applications received.~~

~~(B) The number~~

~~(2) A searchable list and map of final hazardous waste facilities permits issued to date.~~

~~(C) The number~~

~~(3) A searchable list and map of final hazardous waste facilities permits yet to be issued.~~

~~(D)~~

~~(4) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued, including the department's evaluation and findings of each of the criteria listed in Section 25200.21 and its regulations as well as any other criteria used by the department to evaluate the permit application.~~

~~(5) A complete description of the findings supporting each final hazardous waste facility permit granted by the department, including the department's evaluation and findings of each of the criteria listed in Section 25200.21 and its regulations as well as any other criteria used by the department to evaluate the permit application.~~

~~(2) For purposes of paragraph (1), "hazardous waste facility" means a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.~~

(c) The status of the hazardous waste facilities siting program.

(d) The status of the hazardous waste abandoned sites program.

(e) A ~~summary~~ searchable list and map of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management. *The list and map shall specify whether the violations have been corrected and*

1 *include links to inspection reports, final orders, and enforcement*  
2 *actions taken by other agencies.*

3 ~~(f) Summary data on~~ *Data and summaries for each permitted*  
4 *site regarding annual quantities and types of hazardous waste*  
5 *generated, transported, treated, stored, and disposed.*

6 *(g) Statewide data and summaries on annual quantities and*  
7 *types of hazardous waste generated, transported, treated, stored,*  
8 *and disposed.*

9 ~~(g) Summary data~~

10 *(h) Data and summaries regarding onsite and offsite disposition*  
11 *of hazardous waste.*

12 ~~(h)~~

13 *(i) Research activity initiated by the department.*

14 ~~(i)~~

15 *(j) Regulatory action by other agencies relating to hazardous*  
16 *waste management.*

17 ~~(j)~~

18 *(k) A revised listing of recyclable materials showing any*  
19 *additions or deletions to the list prepared pursuant to Section 25175*  
20 *that have occurred since the last report.*

21 ~~(k)~~

22 *(l) Any other data considered pertinent by the department to*  
23 *hazardous waste management.*

24 ~~(l)~~

25 *(m) The information specified in subdivision (c) of Section*  
26 *25161, paragraph (4) of subdivision (a) of Section 25197.1,*  
27 *subdivision (c) of Section 25354, and Sections 25334.7, and*  
28 *25356.5.*

29 ~~(m)~~

30 *(n) A status report on the cleanup of the McColl Hazardous*  
31 *Waste Disposal Site in Orange County.*

32 *SEC. 3. Section 25196.7 is added to the Health and Safety*  
33 *Code, to read:*

34 *25196.7. As part of an enforcement action alleging a release*  
35 *of hazardous waste in violation of this chapter taken by the*  
36 *department, the department shall contract with an independent*  
37 *third party to conduct any required testing to verify that the alleged*  
38 *violation of this chapter has been abated and the site has been*  
39 *remediated.*

1 SEC. 4. Article 8.8 (commencing with Section 25199.20) is  
2 added to Chapter 6.5 of Division 20 of the Health and Safety Code,  
3 to read:

4  
5 Article 8.8. Bureau of Internal Affairs  
6

7 25199.20. (a) The Legislature finds and declares that there  
8 exists a need for a Bureau of Internal Affairs with appropriately  
9 trained personnel, who will perform their duties with honesty and  
10 credibility and without conflicts of interest to oversee the  
11 department.

12 (b) For the purposes of this article, “bureau” means the Bureau  
13 of Internal Affairs established pursuant to subdivision (c).

14 (c) There is hereby established an independent Bureau of  
15 Internal Affairs within the department to do all of the following:

16 (1) Determine when allegations of misconduct within the  
17 department warrant an internal affairs investigation.

18 (2) Conduct complete, objective, and independent investigations  
19 of alleged departmental misconduct.

20 (3) Complete all investigations in a timely and thorough manner.

21 (4) Report any and all findings to the department and to the  
22 DTSC Citizen Oversight Committee established pursuant to Section  
23 25199.21.

24 (d) To meet the objectives of this section, all of the following  
25 shall occur:

26 (1) Before training any peace officer, who is selected to conduct  
27 internal affairs investigations, the California Environmental  
28 Protection Agency shall conduct a complete and thorough  
29 background check of the peace officer. The background check  
30 shall be in addition to the background screening required when  
31 the person was hired as a peace officer. Each peace officer shall  
32 satisfactorily pass the background check required by this  
33 paragraph before his or her appointment to conduct internal  
34 investigations pursuant to this section. A person who has been a  
35 subject of a sustained, serious disciplinary action, including, but  
36 not limited to, termination, suspension, or demotion, shall not pass  
37 the background check.

38 (2) All internal affairs allegations or complaints, whether  
39 investigated or not, shall be logged and numbered sequentially on

1 *an annual basis. The log shall specify, but not be limited to, the*  
2 *following information:*

3 *(A) The sequential number of the allegation or complaint.*

4 *(B) The date of receipt of the allegation or complaint.*

5 *(C) The location of the facility to which the allegation or*  
6 *complaint pertains.*

7 *(D) The disposition of all actions taken, including any final*  
8 *actions taken.*

9 *(3) The log established pursuant to paragraph (2) shall be made*  
10 *available to the DTSC Citizen Oversight Committee and posted*  
11 *on the department's Internet Web site.*

12 *(4) The department shall not direct or influence, or attempt to*  
13 *direct or influence, the investigation or the operations of the*  
14 *bureau.*

15 *(e) Consistent with the purposes of this section, the investigators*  
16 *within the bureau shall conduct investigations and inquiries in a*  
17 *manner that provides a complete and thorough presentation of the*  
18 *facts regarding the allegation or complaint. All extenuating and*  
19 *mitigating facts shall be explored and reported. All reports*  
20 *prepared by the investigator shall provide a complete recitation*  
21 *of the facts.*

22 *(f) An uncorroborated or anonymous allegation shall not be the*  
23 *sole basis for disciplinary action by the department, but may be a*  
24 *basis for an investigation.*

25 *(g) All reports shall be submitted in a standard format,*  
26 *beginning with a statement of the allegation or complaint, provide*  
27 *all relevant facts, and include the investigator's signature certifying*  
28 *that the investigator has complied with applicable provisions.*

29 *(h) In addition to its duties specified in subdivision (c), the*  
30 *bureau shall also do all of the following:*

31 *(1) Upon request by the Governor, the Senate Committee on*  
32 *Rules, or the Speaker of the Assembly, the bureau shall review the*  
33 *policies, practices, and procedures of the department. The bureau*  
34 *may recommend that the Governor, the Senate Committee on Rules,*  
35 *or the Speaker of the Assembly request a review of a specific*  
36 *departmental policy, practice, or procedure that raises a significant*  
37 *issue relevant to the effectiveness of the department. When exigent*  
38 *circumstances of unsafe or life-threatening conditions arise, the*  
39 *bureau may, by whatever means is most expeditious, notify the*

1 Governor, the Senate Committee on Rules, or the Speaker of the  
2 Assembly.

3 (2) Upon completion of a review, the bureau shall prepare a  
4 complete written report that shall be made public. A copy of the  
5 report shall be posted on the department's Internet Web site.

6 (3) The bureau shall, during the course of the review, identify  
7 areas of full and partial compliance or noncompliance with  
8 departmental policies and procedures, specify deficiencies in the  
9 completion of documentation of processes, and recommend  
10 corrective actions, including, but not limited to, additional training,  
11 additional policies, or changes in policies, as well as any other  
12 findings or recommendations that the bureau deems appropriate.

13 (4) (A) The bureau shall issue regular reports, no less than  
14 annually, to the Governor, the Legislature, and to the DTSC Citizen  
15 Oversight Committee established pursuant to Section 25199.21  
16 summarizing its recommendations concerning its investigations  
17 into allegations of departmental misconduct.

18 (B) The report submitted to the Legislature pursuant to  
19 subparagraph (A) shall be submitted in compliance with Section  
20 9795 of the Government Code.

21 (C) (i) The report required pursuant to this paragraph shall  
22 include, but not be limited to, all of the following:

23 (I) Data on the number, type, and disposition of complaints  
24 made against the department.

25 (II) A synopsis of each matter reviewed by the bureau.

26 (III) A summary of the bureau's recommendations regarding  
27 the disposition in the case and the level of discipline imposed, and  
28 the degree to which the department agrees with the bureau's  
29 recommendations regarding the disposition and level of discipline.

30 (IV) The extent to which any discipline was modified after  
31 imposition.

32 (i) The report shall be posted on the department's Internet Web  
33 site and otherwise made available to the public upon their release  
34 to the Governor, the Legislature, and DTSC Citizen Oversight  
35 Committee.

36 (ii) The Secretary for Environmental Protection shall appoint  
37 the director of the bureau who shall oversee and administer the  
38 bureau.

39 25199.21. (a) There is hereby established in the department,  
40 the DTSC Citizen Oversight Committee composed of 13 members



1 *representing California residents affected by hazardous waste.*  
2 *The committee members shall not include representatives from the*  
3 *department or an entity regulated by the department pursuant to*  
4 *this chapter.*

5 *(b) Members of the committees shall be appointed as follows:*

6 *(1) Five members appointed by the Governor.*

7 *(2) Four members appointed by the Senate Committee on Rules.*

8 *(3) Four members appointed by the Speaker of the Assembly.*

9 *(c) Members of the committee shall serve at the pleasure of their*  
10 *appointing authority.*

11 *(d) The committee shall do all of the following:*

12 *(1) Receive allegations of departmental misconduct from*  
13 *members of the public.*

14 *(2) Refer allegation of misconduct to the Criminal Investigation*  
15 *Division of the California Environmental Protection Agency or*  
16 *the bureau, as appropriate.*

17 *(3) Make recommendations for changes in policies, procedures,*  
18 *and standards of the department to increase public participation*  
19 *in, and the transparency of, the department's decisionmaking*  
20 *process.*

21 *(4) Serve as a resource and liaison for communities and*  
22 *residents in communication with the department.*

23 *(5) Review and make public any reports received from the*  
24 *bureau.*

25 *(e) The department shall not direct or influence, or attempt to*  
26 *direct or influence, the operation of the committee.*

27 *(f) The department shall provide the committee with appropriate*  
28 *per diem compensation consistent with Section 19822.5 of the*  
29 *Government Code.*

30 *25199.23. Any information exempted from public disclosure*  
31 *pursuant to the California Public Records Act (Chapter 3.5*  
32 *(commencing with Section 6250) of Division 7 of Title 1 of the*  
33 *Government Code) or any other law shall not be disclosed to the*  
34 *public in a report or other document required by this article to be*  
35 *made public.*

36 ~~SEC. 2.~~

37 *SEC. 5. Section 25200 of the Health and Safety Code is*  
38 *amended to read:*

39 *25200. (a) The department shall issue hazardous waste*  
40 *facilities permits to use and operate one or more hazardous waste*

1 management units at a facility that in the judgment of the  
2 department meet the building standards published in the State  
3 Building Standards Code relating to hazardous waste facilities and  
4 the other standards and requirements adopted pursuant to this  
5 chapter. The department shall impose conditions on each hazardous  
6 waste facilities permit specifying the types of hazardous wastes  
7 that may be accepted for transfer, storage, treatment, or disposal.  
8 The department may impose any other conditions on a hazardous  
9 waste facilities permit that are consistent with the intent of this  
10 chapter.

11 (b) The department may impose, as a condition of a hazardous  
12 waste facilities permit, a requirement that the owner or operator  
13 of a hazardous waste facility that receives hazardous waste from  
14 more than one producer comply with any order of the director that  
15 prohibits the facility operator from refusing to accept a hazardous  
16 waste based on geographical origin that is authorized to be accepted  
17 and may be accepted by the facility without extraordinary hazard.

18 (c) (1) (A) A hazardous waste facilities permit issued by the  
19 department shall be for a fixed term, which shall not exceed 10  
20 years for any land disposal facility, storage facility, incinerator,  
21 or other treatment facility.

22 (B) The owner or operator of a facility intending to extend the  
23 term of the facility's permit shall submit complete Part A and Part  
24 B applications for a permit renewal at least two years prior to the  
25 expiration date of the permit. Any other relevant information shall  
26 be submitted as and when requested by the department.

27 (C) To the extent not inconsistent with the federal act, for an  
28 owner or operator in compliance with subparagraph (B), the permit  
29 is deemed extended until the renewal application is approved or  
30 denied and the owner or operator has exhausted all applicable  
31 rights of appeal.

32 (D) (i) The department shall approve or deny the application  
33 for permit renewal for a facility within 36 months following the  
34 expiration of the permit's fixed term. An application for permit  
35 renewal is deemed denied if the department fails to act within 36  
36 months following the expiration of the permit's fixed term.

37 (ii) Notwithstanding clause (i), for a facility with a permit that  
38 expired on or before January 1, 2015, and for which an application  
39 for permit renewal had been submitted before January 1, 2015, the  
40 department shall approve or deny the application on or before

1 January 1, 2018. An application for permit renewal is deemed  
2 denied if the department fails to act on or before January 1, 2018.

3 (E) This section does not limit or restrict the department's  
4 authority to impose any additional or different conditions on an  
5 extended permit that are necessary to protect human health and  
6 the environment.

7 (F) In adopting new conditions for an extended permit, the  
8 department shall follow the applicable permit modification  
9 procedures specified in this chapter and the regulations adopted  
10 pursuant to this chapter.

11 (G) When prioritizing pending renewal applications for  
12 processing and in determining the need for any new conditions on  
13 an extended permit, the department shall consider any input  
14 received from the public.

15 (2) The department shall review each hazardous waste facilities  
16 permit for a land disposal facility five years after the date of  
17 issuance or reissuance, and shall modify the permit, as necessary,  
18 to assure that the facility continues to comply with the currently  
19 applicable requirements of this chapter and the regulations adopted  
20 pursuant to this chapter.

21 (3) This subdivision does not prohibit the department from  
22 reviewing, modifying, or revoking a permit at any time during its  
23 term.

24 (d) (1) When reviewing any application for a permit renewal,  
25 the department shall consider improvements in the state of control  
26 and measurement technology as well as changes in applicable  
27 regulations.

28 (2) Each permit issued or renewed under this section shall  
29 contain the terms and conditions that the department determines  
30 necessary to protect human health and the environment.

31 (e) A permit issued pursuant to the federal act by the  
32 Environmental Protection Agency in the state for which no state  
33 hazardous waste facilities permit has been issued shall be deemed  
34 to be a state permit enforceable by the department until a state  
35 permit is issued. In addition to complying with the terms and  
36 conditions specified in a federal permit deemed to be a state permit  
37 pursuant to this section, an owner or operator who holds that permit  
38 shall comply with the requirements of this chapter and the  
39 regulations adopted by the department to implement this chapter.

1     *SEC. 6. Section 25200.1 of the Health and Safety Code is*  
2     *amended to read:*

3     25200.1. (a) Notwithstanding Section 25200, the department  
4     shall not issue a hazardous waste facility permit to a facility which  
5     commences operation on or after January 1, 1987, unless the  
6     department determines that the facility operator is in compliance  
7     with regulations adopted by the department pursuant to this chapter  
8     requiring that the operator provide financial assurance that the  
9     operator can respond adequately to damage claims arising out of  
10    the operation of the facility or the facility is exempt from these  
11    financial assurance requirements pursuant to this chapter or the  
12    regulations adopted by the department to implement this chapter.

13    (b) (1) *On or before January 1, 2016, the department shall*  
14    *adopt regulations requiring a financial bond or other security with*  
15    *respect to the nature and scope of the activity authorized and with*  
16    *respect to any potential risk or injury to human health or the*  
17    *environment from a person or entity that applies for a hazardous*  
18    *waste facilities permit pursuant to this article.*

19    (2) *The department shall determine the manner in which, and*  
20    *the condition under which, any security that is deposited pursuant*  
21    *to regulations adopted pursuant to this subdivision may be forfeited*  
22    *or returned, in whole or in part.*

23    (3) *Regulations adopted pursuant to this subdivision do not*  
24    *apply to governmental entities.*

25    ~~SEC. 3.~~

26    *SEC. 7. Section 25200.20 is added to the Health and Safety*  
27    *Code, to read:*

28    25200.20. Interim status granted for a facility pursuant to  
29    Section 25200.5 on or after January 1, 2015, shall terminate five  
30    years from the date the interim status is granted or on the date the  
31    department takes final action on the application for a hazardous  
32    waste facilities permit, whichever is earlier.

33    *SEC. 8. Section 25200.21 is added to the Health and Safety*  
34    *Code, to read:*

35    25200.21. *On or before January 1, 2016, the department shall*  
36    *adopt regulations establishing additional criteria that the*  
37    *department shall use to determine whether to issue a new permit*  
38    *or a renewal of a permit pursuant to this article. These criteria*  
39    *shall include, but are not limited to, all of the following:*

1 (a) Number and types of past violations that will result in a  
2 denial.

3 (b) The vulnerability of, and existing health risks to, nearby  
4 populations. Vulnerability shall be assessed using the  
5 CalEnviroScreen tool, local and regional health risk assessments,  
6 the region's federal Clean Air Act attainment status, and other  
7 indicators of community vulnerability, cumulative impact, and  
8 potential risks to health and well being.

9 (c) Minimum setback distances from sensitive receptors, such  
10 as schools, childcare facilities, residences, hospitals, elder care  
11 facilities, and other sensitive locations.

12 (d) Certification, supported by substantial evidence, by the  
13 owner or operator that the facility sought to be permitted uses the  
14 least hazardous materials, production formulations, and production  
15 processes reasonably available, when appropriate.

16 (e) Certified by substantial evidence by the owner or operator  
17 that it has employed all technically feasible, economically  
18 practicable source reduction, as defined in Section 25244.14, when  
19 appropriate.

20 (f) Evidence of financial responsibility, qualifications of  
21 ownership, and continuity of ownership and operation.

22 (g) Provision of financial assurances pursuant to Section  
23 25200.1.

24 (h) Training of personnel, safety culture and plans, emergency  
25 plans, and maintenance of operations.

26 (i) Consistent compliance with established standards.

27 SEC. 9. Section 25200.22 is added to the Health and Safety  
28 Code, to read:

29 25200.22. The department shall provide a public notice and  
30 comment period before the preparation and adoption of a draft  
31 permit. The department shall consider and respond to all public  
32 comments received before preparing and adopting a draft permit.